

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

04 Cr. 35 (GBD)

-against-

ORDER

RONALDO REGALDO-MILLARES,

Defendant.

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GEORGE B. DANIELS, District Judge:

Defendant is moving for an extension of time to file a notice of appeal from the judgment of this Court, entered on September 22, 2005, which sentenced Mr. Regaldo-Millares to 168 months. Defendant's motion is granted.

Defendant was required to file a notice of appeal within ten days after the judgment was entered. Fed.R.App.P. 4(b)(1)(A). Such a filing requirement can however, be extended upon a finding of excusable neglect or good cause. Fed.R.App.P. 4(b)(4). A determination of excusable neglect is an equitable one to be made by considering "the danger of prejudice to the [non-movant], the length of the delay and its potential impact upon the judicial proceedings, the reason for the delay, including whether it was in the reasonable control of the movant, and whether the movant acted in good faith." Pioneer Invs. Servs. Co. v. Brunswick Assocs., 113 S.Ct. 1489, 1495-98 (1993). Excusable neglect can also include late filings caused by "inadvertence, mistake or carelessness." Id. at 1495.

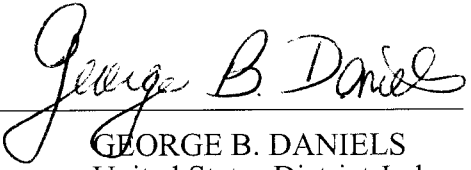
By letter dated October 25, 2005, defense counsel indicates that he was informed on the day of sentence that defendant wished to appeal. Counsel further alleged that he submitted the defendant's case to the clerical staff for a notice of appeal to be filed, but due to a "sudden turnover in clerical positions" the "notice in this case was inadvertently not filed." His letter

further stated that as soon as he learned of this error on October 25, 2005 defense counsel made an application to this Court to extend the time to file an appeal to October 28, 2005. Counsel's error falls within Pioneer's articulation of excusable neglect - late filings caused by "inadvertence, mistake or carelessness."

Accordingly, defendant's motion for an extension of time to file a notice of appeal on or before October 28, 2005 is granted.

Dated: October 26, 2005
New York, New York

SO ORDERED:



GEORGE B. DANIELS
United States District Judge